

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12006 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

LALABHAI AMRABHAI ALGOTAR

Versus

DISTRICT MAGISTRATE

Appearance:

MRS NISHA M PARIKH for Petitioner No. 1
MR RM CHAUHAN, AGP for Respondents No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 13/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 12.05.2003 passed by the District Magistrate, Bhavnagar, against

him, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 12.5.2003.

2. The grounds of detention served upon the petitioner and as placed on record reveal that the detaining authority took into consideration two criminal offences registered against the petitioner on 19.11.2002 and on 2.3.2003 in respect of Sections 385, 386, 387, 506(2) and 114 of the IPC. The detaining authority also took into consideration three in-camera statements of the witnesses as recorded by the sponsoring authority on 2.5.2003, verified by the detaining authority on 8.5.2003. The first statement reveals an unreported incident occurred before three months and other two statements reveal the unreported incident occurred before two and half months from the date of recording of the statements by the sponsoring authority. Through the statements it is revealed that the petitioner is headstrong and is having tendency to pick up quarrels with the citizens for no reason. Due to their fear, nobody comes forward to file any complaint. From the above material, the order impugned came to be passed by the detaining authority.

3. Learned Advocate Ms.Nisha Parikh for the petitioner and learned AGP Mr. R.M.Chauhan were heard at length.

4. Out of various contentions raised on behalf of the petitioner and controverted by the AGP, it appears that the matter can be dealt with and disposed of on the ground of delay in passing order of about two to three months. Chronological event reflects registration of crimes on 19.11.2002 and 2.03.2003. In-camera statements of the witnesses recorded on 2.5.2003 reveal the incident taken place prior to two and half months and three months. The statements came to be verified by the detaining authority on 8.5.2003 and order came to be passed on 12.5.2003. Therefore, considering the last date of registration of criminal offence against the petitioner and even taking into consideration the unreported incidents as narrated above, there is delay of about three months in passing the order. The order impugned, therefore, vitiates on this ground alone. The facts of the case are covered by a decision of the Apex

Court in the matter of PRADEEP NILKANTH vs. S. RAMAMURTHY, reported in AIR 1994 SC 656 and a decision of this Court in the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381. The order impugned in this petition is required to be quashed and set aside on this ground along.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the District Magistrate, Bhavnagar, on 12.05.2003 under Section 3(2) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair